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Summary of stakeholders' submissions on South Africa*

Report of the Office of the United Nations High Commissioner for Human Rights

I. Background

1. The present report was prepared pursuant to Human Rights Council resolutions 5/1 and 16/21, taking into consideration the periodicity of the universal periodic review. It is a summary of 29 stakeholders' submissions[1] to the universal periodic review, presented in a summarized manner owing to word-limit constraints. A separate section is provided for the contribution by the national human rights institution that is accredited in full compliance with the Paris Principles. The report has been prepared taking into consideration the outcome of the previous review.[2]

II. Information provided by the national human rights institution accredited in full compliance with the Paris Principles

2. SAHRC highlighted the impact of the COVID-19 pandemic, which exacerbated human rights linked to poverty, inequality, health, freedom, and security of the person, and related civil unrest in 2021.[3]

3. SAHRC asserted that corruption remained pervasive and had escalated during the pandemic. It noted victimisation and alleged assassination attempts on whistle-blowers and human rights defenders.[4] SAHRC recommended that the Government review laws protecting whistle-blowers and human rights defenders and expedite adopting new legislation.[5]

4. Race, disability, and sexual orientation represented the highest number of equality complaints received. SAHRC noted increased prejudicial expression via social media platforms.[6] It recommended that South Africa expedite adoption of the Prevention and Combating of Hate Crimes and Hate Speech Bill and encourage respect for human rights online.[7]

5. SAHRC expressed concern about the levels of xenophobia. The 2019 National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerances envisaged an early warning system with a 'Rapid Response Mechanism', but this had not

* The present document is being issued without formal editing.

been operationalised.[8] SAHRC recommended that the Government redouble efforts to combat xenophobia, and operationalise the Mechanism.[9]

6. Complaints on socio-economic rights remained among the top five violations reported in 2019 to 2020, led by access to healthcare and water. Inequalities regarding water persisted, with women and historically marginalised communities most affected. Several mining company operations drew water from natural sources also serving communities and/or operated without a water-use licence. More than 3,000 schools had pit latrines and inadequate sanitation.[10] SAHRC recommended that the Government address the disproportionate access to water and abuse of water resources by mining companies, and eradicate school pit latrines.[11]

7. SAHRC remained concerned about the disparity in healthcare access between public and private systems, and between rural and urban areas. Notably during the COVID-19 pandemic, poor infrastructure, staff shortages, and limited access to medicine impeded access. The National Health Insurance draft Bill had been before Parliament since August 2019.[12] SAHRC recommended that South Africa upgrade the infrastructure at healthcare facilities, particularly in rural areas, ensure speedy procurement of equipment and medication in poorly resourced facilities, and expedite passage of the insurance legislation.[13]

8. In 2020 the government introduced a temporary Social Relief of Distress Grant to support persons vulnerable to COVID-19 impact. The pandemic and Grant renewed calls for strengthened social assistance and a universal basic income grant. SAHRC expressed concern about conflicting views within government on the feasibility of the new grant.[14] It recommended that the Government clarify its position on the basic income grant and what social assistance measures it intends to introduce to give effect to the Constitution.[15]

9. SAHRC reported that, while the Commission had received additional funding, the budget remained inadequate to fully effectuate its mandate.[16] It was concerned about delays in filling Commissioner vacancies.[17] SAHRC recommended that the Government increase the Commission's budget in order to maintain its independence and fully execute its mandate, noting increased complaints received and its additional roles as the National Preventive Mechanism, and Independent Monitoring Mechanism under the Convention on the Rights of Persons with Disabilities. The Government should commence processes to fill Commissioner vacancies.[18]

III. Information provided by other stakeholders

A. Scope of international obligations and cooperation with human rights mechanisms

10. AI noted that South Africa maintained its declaration under Articles 13 2(a) and 14 of the International Covenant on Economic, Social, and Cultural Rights, despite the Constitutional Court finding the right to basic education in the Constitution "immediately realisable".[19] AI and JS14 recommended that South Africa withdraw the declaration.[20]

11. Three stakeholders recommended that South Africa ratify all outstanding international human rights treaties.[21]

12. UPR-BCU recommended that South Africa ratify the Optional Protocols to the Convention on the Rights of the Child and the International Covenant on Economic, Social and Cultural Rights on a communications procedure.[22]

B. National human rights framework

1. Constitutional and legislative framework

13. UPR-BCU recommended that South Africa incorporate into domestic law the individual complaints and inquiry procedures under the Optional Protocols to the

International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child.[23]

2. Institutional infrastructure and policy measures

14. AI stated that the South African Human Rights Commission faced resource and capacity constraints whilst fulfilling its mandate.[24]

C. Promotion and protection of human rights

1. Implementation of international human rights obligations, taking into account applicable international humanitarian law

Equality and non-discrimination

15. UPR-BCU recommended that South Africa ensure that national law is in full compliance with the International Convention on the Elimination of Racial Discrimination, and organise a country visit of the Special Rapporteur on Contemporary Forms of Racial Discrimination, Xenophobia, and Related Intolerance.[25]

Right to life, liberty and security of person, and freedom from torture

16. CHRI noted reports of excessive use of force by the police, including during enforcement of COVID-19 lockdown regulations.[26] It recommended that the government accelerate police training on human rights and the use of force, and implement sanctions against perpetrators of police brutality.[27]

17. JS9 reported increases in torture cases. Despite the Prevention and Combating of Torture of Persons Act in force since 2013, there was no record of torture cases adjudicated using this legislation and victims did not access State rehabilitation. Most torture cases reported to the Independent Police Investigative Directorate were adjudicated as assault cases, and once investigated by the Directorate, were sent back to the police for internal disciplinary actions. During COVID-19 lockdowns, both the police and army reportedly committed torture, with the cases not prosecuted as torture. Regulations had also not been promulgated to operationalise the legislation.[28]

18. JS9 recommended that South Africa promulgate Regulations to prosecute torture cases using the Act, send torture cases to the National Prosecuting Authority, establish a national rehabilitation programme for torture victims, and expedite the investigation and prosecution of torture cases committed by the army and police during the 2020 lockdown.[29] CHRI recommended that South Africa ensure remedy for torture victims in prison, and sanction officers who commit torture.[30]

Administration of justice, including impunity, and the rule of law

19. JS9 noted that the Traditional Courts Bill failed to provide a right to opt out of proceedings in traditional courts where the decision legitimacy was in dispute or where the decision violated women's rights. The Parliament had postponed passing the Bill to obtain a legal opinion on the constitutionality of excluding the opt-out mechanism.[31] JS9 recommended that South Africa accelerate finalising the Bill with amended language on the right to opt out, and ensure that traditional court proceedings conform with the formal justice system regarding non-discrimination principles.[32]

20. CHRI recommended providing adequate funding to Legal Aid South Africa.[33]

Fundamental freedoms and the right to participate in public and political life

21. JS1 and JS2 noted reported physical attacks of journalists by the police, political parties, and the public, including an alleged murder, as well as online harassment, including by public figures.[34] CHRI recommended that the Government guarantee security for journalists, investigate and prosecute all attacks, and build the capacity of security officials on freedom of expression.[35] JS1 recommended finalising the investigation into the alleged

murder and bringing those responsible to justice, and enforcing Standing Order156 on police treatment of journalists.[36]

22. JS1 expressed concern that attempts to criminalise "false news" would have a chilling effect on media freedoms.[37] JS1 recommended that the Government repeal laws criminalizing disinformation, and enhance efforts to disseminate evidence-based information.[38]

23. JS1 considered that in the Prevention and Combating of Hate Crimes and Hate Speech Bill (2018), the criminalisation of hate speech was disproportionate given civil limitations on hate speech in the 2000 Promotion of Equality and Prevention of Unfair Discrimination Act.[39] JS2 noted the Bill lacked a definition of racism.[40] JS1 recommended that the Government remove disproportionate limits to freedom of expression from the Bill.[41] JS2 recommended aligning the Bill with international standards.[42]

24. CHRI noted the President of South Africa returned the Protection of State Information Bill to Parliament in 2020.[43] JS1 highlighted that the Bill stipulated a 15- to 25-year jail term for journalists found in possession of classified documents.[44] JS2 was concerned that the Bill used broad language and infringed on access to information.[45] Several stakeholders recommended that South Africa bring laws in line with international standards.[46] JS1 recommended including a public interest defense in the Bill for sharing protected information, and defining "classified documents".[47]

25. JS1 was concerned about lack of safety for whistleblowers, and gaps in corresponding laws and mechanisms.[48] It recommended that South Africa review the Protected Disclosures Act to strengthen whistle-blower protection, and establish transparent oversight mechanisms.[49]

26. JS2 noted the 2021 Non-Profit Organisation Amendment Bill proposed compulsory registration of foreign organisations, so may be used to control international funding of organisations.[50] Organisations also faced attacks and office raids.[51] JS2 recommended that the Government foster a safe environment for civil society, investigate raids, and consult civil society on amending the Act.[52]

27. JS2 and JS9 noted reports that human rights defenders, particularly women and those working on corruption, housing, and environmental rights, faced harassment.[53] JS2 recommended that the Government investigate attacks and bring perpetrators to justice, repeal or amend legislation restricting their work, and adopt a law to protect them.[54] JS9 recommended ending persecutions against women human rights defenders and developing legislation to protect them.[55]

28. JS2 reported that the Regulation of Gatherings Act (205 of 1993) was at times misapplied by authorities.[56] JS9 contended that rising inequality and poverty had prompted protests, with the police and army resorting to heavy-handed responses.[57] JS2 and JS9 recommended that the Government amend the Act to guarantee freedom of peaceful assembly, hold the police and army accountable for related crimes, and update their human rights training.[58] JS2 recommended releasing those arbitrarily detained, and investigating instances of excessive force by security forces.[59]

Right to privacy

29. JS1 and JS2 expressed concern about state surveillance, and welcomed the Constitutional Court ruling declaring the 2002 Regulation of Interception of Communications and Provision of Communication-related Information Act 70 unconstitutional.[60] JS1 recommended that South Africa ensure that Act amendments are aligned with the Constitution and international obligations, and ensure public consultation.[61]

Prohibition of all forms of slavery, including trafficking in persons

30. JS4 reported that prosecutions for human trafficking remained low, data collection inadequate, the police were complicit in trafficking, and traffickers targeted children without birth registration or identification.[62] JS4 recommended that the Government introduce a regulatory inspector, ensure all children are documented, enforce compulsory police training, and increase surveillance of police corruption.[63]

31. ECLJ urged South Africa to implement the Prevention and Combatting of Trafficking in Persons National Policy Framework so that all human trafficking cases are investigated and prosecuted, prioritize training for border patrol agents, enforce consequences for authorities involved in human trafficking, and allocate resources to rehabilitate victims and return foreign victims.[64]

Right to an adequate standard of living

32. JS14 stated that South Africa remained the most unequal country in the world, unemployment and poverty had deepened, and patterns of exclusion persisted.[65]

33. JS15 asserted that the consumer price index could not be used as an instrument to measure an adequate standard of living as it measured change.[66] JS15 recommended that South Africa adopt the Decent Standard of Living Index, and annually publish on progress.[67]

34. JS13 reported that hunger was widespread, and worsened during the COVID-19 pandemic. It noted the government emphasis on commercialisation, including incorporating small-scale farmers into large-scale commercial production.[68] JS13 recommended that the Government increase production grants and facilitate markets for small producers.[69]

35. JS13 reported that the 1997 Extension of Security of Tenure Act made provisions for millions of farm workers to be lawfully evicted.[70] LRC-Land contended that the Commission on the Restitution of Land Rights, tasked with the management of land claims, was under-resourced, corrupt, and poorly administered. South Africa had not transformed the colonial and apartheid exclusionary tenure system because it could not record the many tenure regimes that emerged. Legislation had not been developed to clarify equitable redistribution.[71] JS13 recommended to protect legitimate tenure, including through reviewing the Act, and protect rural workers from land grabs. LRC-Land recommended that South Africa reassert the independence of the Commission, adopt a Redistribution Framework Act for pro-poor redistribution, and undertake tenure reform.[72]

36. LRC-Land noted insufficiently treated effluent discharged from water treatment plants, and extensive water contamination from mines.[73] LRC-Land recommended making water management reporting more accessible.[74]

Right to health

37. Two stakeholders noted high rates of HIV/AIDS infections.[75] UPR-BCU recommended that South Africa invest in broader access to HIV/AIDS treatment, prioritise school sex education, and invest more in awareness-raising.[76]

38. JS16 highlighted challenges in young people's access to sexual and reproductive health information and services, including inefficient bureaucracy, lack of availability of contraceptives, and negative attitudes of health-care workers.[77] JS17 noted that the COVID-19 pandemic further limited access to services.[78] JS16 recommended that the Government prioritize supplying contraceptives, fully implement the Schools Health Act, digitize information for young people, and collaborate with youth organizations.[79] AI recommended ensuring that facilities and services for sexual and reproductive health are accessible for all.[80]

39. JS16 noted that the COVID-19 pandemic had disrupted in-school comprehensive sexuality education, at a time of increased learner pregnancies and HIV infections.[81] JS17 noted resistance by some groups to sexuality education in schools.[82] JS17 recommended that the Government raise awareness of the need for sexuality education.[83] LRC-Edu and HRW recommended teaching comprehensive sexuality education in all schools.[84]

40. AI stated that, despite abortion being legal, barriers to accessing abortion services persisted. Only 7 per cent of the country's health facilities reportedly provided termination of pregnancy services, largely attributed to unregulated refusals by healthcare professionals. While National Clinical Guidelines for Implementation of the Choice of Termination of Pregnancy Act, on conscientious objection, had been drafted in 2019, these had not been fully disseminated.[85] JS16 highlighted shortages of designated facilities and abortion drugs, conscientious objection, and lack of information about services.[86] AI recommended that the Government train all healthcare workers on the Guidelines.[87] JS16 recommended designating more abortion facilities, and enforcing stricter measures on conscientious objection.[88]

41. JS4 highlighted concerns with mental health, noting limited hospital accommodation, lack of mental health education and support for students, and lack of treatment for mentally ill prisoners.[89] JS4 recommended that South Africa create a fund for mental health, implement workshops at schools, invest in community education, enforce the use of forensic psychology within the justice system, and introduce compulsory education for parents on mental health.[90]

Right to education

42. AI reported that the public education system was characterised by decaying infrastructure, overcrowded classrooms, and poor educational outcomes that perpetuated inequality.[91] Three stakeholders noted the use of pit toilets in many schools.[92] AI recommended that the Government set concrete targets and 2023 deadlines for upgrading school infrastructure, and hold officials accountable.[93] Several stakeholders recommended ensuring all schools have access to water and sanitation.[94] FMSI recommended improving school infrastructure, especially in rural areas, and increasing teacher training resources.[95] LRC-Edu recommended providing data on infrastructure progress, and creating province plans.[96]

43. JS14 contended that most poor or African children, children in rural areas or with disabilities, did not receive quality education.[97] JS14 recommended that South Africa adopt evidence-based policies and laws that are systematised for the educational inclusion of the most marginalised from birth and provision of quality education to equalise their development.[98]

44. Several stakeholders noted that educational inequality was exacerbated by COVID-19 pandemic school responses, with poorer students unable to access online learning.[99] LRC-Edu recommended that the Government fulfil its obligations on providing school digital infrastructure.[100] BCN recommended supplying more learners with internet and/or tablets.[101]

45. EELC reported that discriminatory school admission practices particularly affected overaged and LGBTQI learners and foreign nationals, while lack of support and resources inhibited learners with learning difficulties and disabilities.[102] FMSI noted that many refugee children could not access schools as some schools demanded identity documents.[103] LRC-Edu noted the 2019 High Court judgement confirming that the Constitution guaranteed all children, irrespective of their nationality, a right to education.[104] FMSI encouraged the Government to ensure primary school education for refugee children.[105] LRC-Edu recommended informing schools of the High Court judgment.[106]

46. LRC-Edu noted reports that girls were more likely to drop out of school than boys, due to school fees, family responsibilities, negative stereotypes about girls' abilities, and lack of access to hygiene products.[107] LRC-Edu recommended that South Africa ensure that teacher training addresses negative stereotypes about girls' abilities, remove stereotypes in the curriculum, and adopt regulations to provide sanitary products.[108] HRW recommended ensuring that pregnant students are supported to complete secondary education.[109]

47. EELC reported that, despite its legal prohibition, corporal punishment continued in schools.[110] It noted increased and more severe incidents of bullying, including murders.[111] Levels of sexual assault in schools were also reportedly high.[112]

Development, the environment, and business and human rights

48. AI contended that the Department of Mineral Resources and Energy, regulating the mining industry and enforcement of social and labour plans, which were legally binding mechanisms through which mining companies were required to address socio-economic impacts of mining on communities, had failed to adequately monitor the implementation of such plans.[113] AI noted that the Department was, inter alia, under-resourced and unable to perform.[114] LRC-Land noted some communities reported no consultation, plan implementation, transparency or accountability by the mining companies and no evidence of enforcement by the Department.[115]

49. AI recommended that South Africa increase the resources of the Department to monitor and enforce compliance with social and labour plans, legally require public disclosure of company plan reports, and amend the Mineral and Petroleum Resources

Development Act to embed the right to informed consent.[116] LRC-Land recommended to review the laws enabling business human rights abuses, implement free, prior, and informed consent for communities, ensure community consultation, ensure financial consequences for mining companies failing to fulfil plan obligations, and review laws to ensure funds benefit the community.[117]

50. JS3 was concerned about violations of the right to free, prior, and informed consent of indigenous peoples regarding land development. It noted the court battle between the Khoi-San Peoples and the company Amazon, which had begun construction of their African headquarters on a site of great significance to both Peoples. A judge had halted the project pending consultation with indigenous peoples.[118] JS3 recommended to ensure compliance with the judicial order until all stakeholders are consulted via their own representative institutions and decision-making processes and their consent is attained.[119]

51. JS9 reported that communities in South Africa had had to fight energy related multilateral companies to protect their land, water, and air from degradation.[120] It recommended that the Government promote alternative energy sources that preserve the environment.[121]

2. Rights of specific persons or groups

Women

52. Three stakeholders expressed concern that gender-based violence was pervasive.[122] Despite progressive legislation, there were reportedly systemic failures in the implementation of policies and legislation, including that the police often did not fulfil their obligations.[123] Victims were fearful of reporting assaults to the police given gender stereotypes and discriminatory attitudes.[124] JS16 highlighted the increase of gender-based violence during the COVID-19 lockdown and related socio-economic factors, with challenges around the justice system and its response to victims.[125] JS4 noted the lack of a standardised curriculum for frontline workers on gender-based violence cases, while backlogs remained.[126]

53. AI recommended that South Africa develop targets for the National Strategic Plan on Gender-Based Violence, train all professionals working with victims on their legal obligations and preventing secondary victimisation, appropriately resource police stations, and promote changes in knowledge and behaviours to eradicate gender stereotypes and myths around sexual violence.[127] JS8 and JS9 recommended collecting disaggregated data on all forms of violence against women.[128] JS9 recommended to ensure Plan funding, implement the Criminal and Related Matters Amendment Act, Domestic Violence Amendment Act and the Criminal Law Amendment Act Amendment Act and orient justice system officers and raise community awareness on the new laws.[129] JS8 recommended allocating a budget to implement the Domestic Violence Act.[130]

54. JS4 recommended to redouble efforts to create a National Council on Gender-Based Violence and Femicide, implement a government-mandated curriculum for frontline workers, tackle the case backlog, and adopt a broader social approach.[131] JS16 recommended to fast-track establishment of the national coordinating structure on gender-based violence.[132] JS17 recommended to address under-reporting of sexual and gender-based violence, create a monitoring team of police officers and civilians, adopt survivor-centred approaches, and establish programs that empower women to become economically independent.[133]

55. Three stakeholders reported that South Africa continued to criminalize sex work, increasing the risk of gender-based violence against sex workers.[134] HRW noted reports that sexual assault cases increased following COVID-19 lockdowns, with the government failing to provide necessary funding for shelters. Shelter access for some groups was difficult, including LGBTI persons and immigrants[135] JS12 noted that HIV prevalence was higher among female sex workers, and that criminalisation obstructed their healthcare access.[136]

56. HRW recommended that the Government increase funding to shelters, finalize the draft Intersectoral Shelter Policy, and train shelter staff to prevent discrimination.[137] JS9 and JS12 recommended to decriminalise sex work.[138] JS9 recommended to enact policy or legislation to protect sex workers and ensure healthcare access.[139] JS12 recommended to introduce sex worker rights into police training curricula.[140]

Children

57. JS4 noted that the homicide rate for children was twice the global average, exacerbated by the COVID-19 pandemic, and that children systematically experienced abuse. The Early Childhood Development Sector remained under-supported.[141] JS4 recommended that the Government implement widespread caregiver education, prompt communities to develop safeguarding strategies, use schools to identify signs of physical abuse, conduct programmes to transform harmful social norms around child discipline, and appoint a child commissioner in every province.[142] JS4 and LRC-Edu recommended to prioritize the early childhood development sector and allocate adequate resources.[143]

58. JS14 asserted that poor child development and perpetuation of inter-generational inequality along historical fault lines of race, geography, and gender, had been aggravated by the pandemic.[144] JS14 recommended that the Government make it a national development priority to reduce children's poverty, increase the number of marginalised children who develop to their potential, coordinate state-wide planning and services under the National Development Plan, and report regularly to oversight structures.[145] It recommended to establish the Office on the Rights of the Child in the Presidency, adopt a child-centred budgeting approach, equalise provincial and local inequities in resource allocation, combat corruption, and establish a standing committee in Parliament on children's rights.[146]

59. JS17 reported that many girls were victims of harmful practices such as child marriage, abduction for marriage, and polygamy. The Customary Marriages Bill outlawed customary marriages of children under 18 years of age, but concerns remained that the Recognition of Customary Marriages Act allowed persons under 18 to get married with consent, while the Sexual Offenses Act (1997) put the age of consent for sex at 16.[147] JS17 and UPR-BCU recommended that the Government reform cultural attitudes that perpetuate early marriage, ensure that law enforcement implements the laws prohibiting child and forced marriages, and capacitate traditional authorities to combat child marriages.[148] UPR-BCU recommended to harmonize all marriage laws to delineate a minimum age of 18 years.[149]

Older persons

60. JS9 stated that older persons were subjected to negative societal perceptions of them as a burden with little to contribute to society. Their safety was also limited, particularly for women alone in rural areas for which rapes were reported.[150]

Persons with disabilities

61. JS4 and JS14 reported that children with disabilities experienced exclusion and were denied access to services.[151] JS9 recommended that South Africa develop a single law to coordinate services for children with disabilities.[152] JS14 recommended to ensure that caregivers are supported, that provinces allocate funds to equalise healthcare access, and that all children with disabilities access the social assistance needed.[153]

62. HRW reported that children with disabilities were discriminated against in enrollment decisions, and marginalized in mainstream schools. South Africa had not adopted legislation guaranteeing the right to an inclusive education, or allocated adequate funding.[154] JS4 noted that children with disabilities lacked education opportunities due to lack of school accommodation, expenses, abuse, neglect, and poor teacher awareness.[155] NATF stated that lack of understanding of albinism and related support made education in mainstream schools difficult.[156]

63. HRW and LRC-Edu recommended that the Government adopt a law on inclusive quality education.[157] HRW recommended guaranteeing that children with disabilities do not pay fees for public schools.[158] JS4 and LRC-Edu recommended to budget for inclusive education.[159] FMSI recommended to require all public schools to ensure reasonable accommodation, and to amend the Schools Act, including to ensure access to quality education and to Adult Basic Education for persons with disabilities.[160] NATF recommended to provide free or subsidised assistive technology for persons with albinism.[161]

64. NATF reported that South Africa had not ratified the African Disability Protocol, did not have a disability policy, that the White Paper on the rights of persons with disability did

not mention albinism, and that the albinism sector was not represented in government. NATF noted the absence of albinism in the 2022 census, making responses to their health and security concerns difficult. The failure to recognise albinism as a disability across government also challenged access to disability benefits. NATF urged the government to formally recognise the sector, include them in decision-making, adopt clear strategies for their security, and adopt the National Action Plan for persons with Albinism.[162]

65. JS4 recommended that the Government conduct nationwide campaigns to challenge the stigmatisation, exclusion, and discrimination of persons with disabilities, adopt sign language as a national language, enforce compulsory police training, and amend legislation to prevent employers using loopholes in hiring.[163]

Indigenous peoples and minorities

66. JS3 asserted that South Africa failed to meet its obligations to protect the rights of Khoi and San Peoples to their lands, political representation, identities, languages, and cultures. The 2022 census reportedly excluded their identities, and their languages were not among the nation's official languages. Khoi and San Peoples also lacked formal recognition as First Nations. They faced barriers to accessing land restitution claims, notably since Khoi and San claims pre-dated the 1913 cut-off point. Violence against people of Khoi and San descent continued.[164]

67. JS3 recommended that South Africa develop reparative strategies and mechanisms to address injustice under colonialism and apartheid including land theft, include Khoi and San ethnic identities in the census, formally recognize them as First Nations, recognize their land claims predating 1913, officially recognize their languages among the country's official languages, fund indigenous language revitalization, and create a national action plan on implementing indigenous peoples' rights.[165]

68. LDC-Land reported that the Nibela community had repeatedly been prevented by conservation authorities from fishing, despite legal recognition of their customary rights to fish. It recommended that officials be cognisant of the impact of conservation initiatives on the rights of indigenous people.[166]

Lesbian, gay, bisexual, transgender and intersex persons

69. Several stakeholders asserted that, notwithstanding legal and policy protections, violence and discrimination against LGBT people remained systemic.[167] HRW and JS6 recommended that the Government investigate and prosecute cases of violence.[168] HRW recommended to strengthen monitoring systems, ensure that the police collect data on violence and disaggregate it by motive, and provide financial support to shelters and training for staff.[169] JS6 recommended amending criminal laws to include aggravated circumstances for crimes motivated by related prejudice.[170] JS9 recommended sensitisation workshops to foster understanding of the LGBTQI+ community.[171]

70. JS6 reported that trans and gender diverse people experienced inequality, increasing their risk of poverty and impacting access to citizenship, healthcare and education.[172] JS6 recommended that South Africa train government staff on trans and gender diverse people's rights, address their unemployment rate, develop gender recognition legislation compliant with international human rights, and take disciplinary measures against those implicated in school victimisations.[173] JS6 recommended to adopt the 2021 National Gender Affirming Guidelines.[174] JS8 recommended training health workers on inclusive practices.[175]

71. JS6 stated that the criminalization of sex work and drug use exposed trans and gender diverse people who were sex workers and/or who used drugs to police violence, extortion, and detention and deprived them of livelihoods.[176] JS6 recommended that the Government enact legislation removing all gender marker options from identity documents or including a third gender-neutral option, investigate and punish attacks, and decriminalise sex work and drug use.[177]

72. JS7 reported that intersex persons faced pervasive harmful practices and discrimination, and during childhood were often subjected to non-consensual genital surgery.[178] JS7 recommended that the Government ban genital surgery on intersex children,

ensure sanctions for healthcare providers conducting such interventions without patient consent, and mandate training on informed consent, bodily integrity, and bodily diversity.[179]

73. JS8 noted that conversion practices in South Africa were prevalent.[180] JS8 recommended that the Government establish monitoring mechanisms, provide counselling services for victims, and introduce community sensitization programmes.[181]

Migrants, refugees, and asylum-seekers

74. Several stakeholders reported that, despite the 2019 National Action Plan Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, foreign nationals in South Africa faced xenophobic violence, and xenophobic comments from political figures.[182] JS4 was concerned about proposed legislation perpetuating xenophobia such as the Gauteng Township Economic Development Bill (2020), preventing foreign nationals from operating a business, and policies such as the draft Labour Migration Policy, placing quotas of foreign nationals' employment in certain sectors.[183]

75. HRW noted that failure in public service delivery had resulted in many foreign nationals remaining undocumented, and since the 2020 COVID-19 lockdown Refugee Reception Offices had been closed, leaving refugees open to arbitrary arrests and deportation.[184] JS4 and JS9 noted reports of law enforcement officials using counterfeit goods raids as covers for xenophobic attacks.[185] JS9 reported that during COVID-19, many refugees and asylum seekers had their bank accounts frozen due to expired permits.[186]

76. HRW recommended that the Government ensure greater accountability among public figures, and that law enforcement arrest perpetrators of xenophobic violence.[187] JS4 recommended rejecting the Gauteng Township Economic Development Bill and Labour Migration Policy, developing a system allowing everyone to have documentation, and training the police on responding to xenophobia effectively.[188] JS9 recommended expediting enactment of the Prevention and Combating of Hate Crimes Act, and ensuring accountability for xenophobic violence.[189] JS5 and JS8 recommended implementing the National Action Plan.[190]

77. JS5 noted allegations of abuses at immigration detention facilities, including prolonged detention periods, restricted access to legal representation, corruption, and bribery, use of force, and arbitrary detention. Detention conditions were reportedly poor.[191] The Immigration Act provided criminal penalties for violations of the Act.[192] JS5 noted reports of children in detention.[193] JS5 indicated that the pandemic deepened unequal treatment of non-nationals.[194]

78. JS5 recommended that the Government decriminalise migration violations, eradicate child detention, ensure that asylum seekers have access to asylum determination procedures, address reports of poor conditions, corruption, and abuse of detainees, investigate reports of detention over the 120-day legal maximum, and ensure that detainees have access to legal representation.[195]

Stateless persons

79. JS10 reported that South Africa did not have a mechanism to identify stateless persons. JS10 and LRC-Edu were concerned about the laws and policies that undermined rights to a nationality, including requirements for parents to have valid documentation for birth registration, limited legal options for unaccompanied or separated migrant children, and administrative barriers to accessing citizenship.[196]

80. JS10 and LRC-Edu recommended that all children born in South Africa should have their births registered regardless of immigration or documentation status of their parents.[197] JS10 recommended that South Africa provide permanent residence status to all unaccompanied or separated migrant children at risk of statelessness.[198]

Notes

[1] The stakeholders listed below have contributed information for this summary; the full texts of all original submissions are available at: www.ohchr.org (one asterisk denotes a national human rights institution with "A" status).

Civil society

Individual submissions:

AI	Amnesty International, London (United Kingdom of Great Britain and Northern Ireland);
BCN	The Stichting Broken Chalk, Amsterdam (Netherlands);
CHRI, Africa Office	Commonwealth Human Rights Initiative, Africa Office, Accra (Ghana);
ECLJ	European Centre for Law and Justice, The, Strasbourg (France);
EELC	Equal Education Law Centre, Khayelitsha, 7784 (South Africa);
FMSI	Marist International Solidarity Foundation, Rome (Italy);
HRW	Human Rights Watch, Geneva (Switzerland);
LRC-Edu	Legal Resources Centre Education Team, Cape Town (South Africa);
LRC-Land	Legal Resources Centre Land Team, Johannesburg (South Africa);
NATF	NATIONAL ALBINISM TASK TEAM, centurion (South Africa);
UPR-BCU	The UPR Project at BCU, Birmingham (United Kingdom of Great Britain and Northern Ireland).

Civil society

Joint submissions:

JS1	**Joint submission 1 submitted by:** Amnesty International, London (United Kingdom of Great Britain and Northern Ireland); Amnesty International, Campaign for Free Expression, Committee to Protect Journalists, Media Monitoring Africa, South African National Editors' Forum;
JS2	**Joint submission 2 submitted by:** CIVICUS: World Alliance for Citizen Participation, Johannesburg (South Africa); Human Rights Institute of South Africa (HURISA), Centre for the Study of Violence and Reconciliation (CSVR);
JS3	**Joint submission 3 submitted by:** Cultural Survival, Cambridge, (United States of America); NATURAL JUSTICE, Cultural Survival, SUPUSUPU;
JS4	**Joint submission 4 submitted by:** Edmund Rice International, Geneva (Switzerland); Edmund Rice International, The Justice Desk, The Dominican School for Deaf Children, Ubumbano ECD Forum, The Chaeli Campaign, Christian Brothers' College, Boksburg, The Justice Desk Youth Ambassadors;
JS5	**Joint submission 5 submitted by:** Global Detention Project, Geneva (Switzerland); Global Detention Project, Geneva, (Switzerland) and Lawyers for Human Rights, Johannesburg, (South Africa);
JS6	**Joint submission 6 submitted by:** Gender Dynamic, Cape Town (South Africa); Gender Dynamix, Iranti, Triangle Project, Women's Legal Centre, and Legal Resource Centre;
JS7	**Joint submission 7 submitted by:** Iranti, Johannesburg (South Africa); Iranti Intersex South Africa Triangle Project;
JS8	**Joint submission 8 submitted by:** Iranti, Johannesburg (South Africa); NGO coalition;
JS9	**Joint submission 9 submitted by:** International Rehabilitation Council for Torture Victims, Copenhagen (Denmark); Human Rights Institute of South Africa (HURISA), Centre for the Study of Violence and Reconciliation (CSVR), Sonke Gender Justice, CIVICUS, LOPECO, Catholic Healthcare Association (CATCHA);
JS10	**Joint submission 10 submitted by:** Institute on Statelessness and Inclusion, Eindhoven (Netherlands); The Scalabrini Centre of Cape Town, Lawyers for Human Rights, the Centre for Child

	Law, the UCT Refugee Rights Unit and the Institute on Statelessness and Inclusion;
JS11	**Joint submission 11 submitted by:** REDRESS, London (United Kingdom of Great Britain and Northern Ireland); Access Chapter 2 – South Africa;
JS12	**Joint submission 12 submitted by:** Akahata-Equipo de Trabajo en Sexualidades y Géneros, Buenos Aires (Argentina); Sisonke African Sex Workers Alliance Sexual Rights Initiative;
JS13	**Joint submission 13 submitted by:** Rural Women's Assembly South Africa, Cape Town (South Africa); Commercial Stevedoring Agricultural and Allied Workers Union (CSAAWU) and Coastal Links (Eastern Cape);
JS14	**Joint submission 14 submitted by:** South African National Child Rights Coalition, Hatfield, Pretoria (South Africa); 160 civil society organisations and activists that are members of the SANCRC;
JS15	**Joint submission 15 submitted by:** Social Policy Initiative (SPI), JOHANNESBURG (South Africa); The Centre for Human Rights (CHR), University of Pretoria;
JS16	**Joint submission 16 submitted by:** The Sexual Rights Initiative, Ottawa (Canada); SRHR Africa Trust, The PACT, Y Plus South Africa Network, MB Lifestyle, Sonke, AIDS and Rights Alliance for Southern Africa, South African National AIDS Council;
JS17	**Joint submission 17 submitted by:** World Council of Churches Commission of the Churches on International Affairs, Geneva (Switzerland); ACT Alliance, Sonke Gender Justice, and ACT Ubumbano.
National human rights institution:	
SAHRC	South African Human Rights Commission, Johannesburg (South Africa).

[2] See A/HRC/36/16, A/HRC/36/16/Add.1 and A/HRC/36/2.
[3] SAHRC paras. 1.2–1.3.
[4] SAHRC paras. 4.1–4.2.
[5] SAHRC para. 4.3.
[6] SAHRC paras. 5.1 and 5.2.
[7] SAHRC para. 5.3.
[8] SAHRC paras. 5.5–5.7.
[9] SAHRC paras. 5.8.1–5.8.2.
[10] SAHRC paras. 6.1–6-6.
[11] SAHRC para. 6.7.
[12] SAHRC paras. 7.1–7.4.
[13] SAHRC para. 7.5.
[14] SAHRC paras. 8.1–8.2.
[15] SAHRC para. 8.3.
[16] SAHRC para. 3.4.
[17] SAHRC para. 3.5.
[18] SAHRC paras. 3.6.1 and 3.6.2.
[19] AI para. 7.
[20] AI para. 39 and JS14 para. 5.6.1.
[21] JS5 para. 11.5, JS14 para. 5.6.1 and SAHRC para. 2.3.
[22] UPR-BCU para. 30 ii).
[23] UPR-BCU para. 3.
[24] AI para. 8.
[25] UPR-BCU p. 5.
[26] CHRI paras. 15 and18.
[27] CHRI para. 20.
[28] JS9 para. 3.3.
[29] JS9 para. 3.3.
[30] CHRI para. 30.
[31] JS9 para. 3.7.
[32] JS9 para. 3.7.
[33] CHRI para. 10.

[34] JS1 paras. 6–18 and JS2 paras. 3.13–3.17.
[35] CHRI p. 9.
[36] JS1 paras. 53–55.
[37] JS1 paras. 29–33.
[38] JS1 paras. 61–66.
[39] JS1 paras. 36–42.
[40] JS2 para. 4.5.
[41] JS1 paras. 68–69.
[42] JS2 para. 6.3.
[43] CHRI pp. 7–8.
[44] JS1 paras. 47–49.
[45] JS2 para. 4.4.
[46] CHRI p. 8, JS1 para. 76 and JS2 para. 6.3.
[47] JS1 paras. 71–76.
[48] JS1 paras. 43–46.
[49] JS1 paras. 70–73.
[50] JS2 para. 2.5.
[51] JS2 para. 2.7.
[52] JS2 para. 6.1.
[53] JS2 paras. 3.4–3.12 and JS9 para. 3.6.
[54] JS2 para. 6.2.
[55] JS9 para. 3.6.
[56] JS2 paras. 5.3–5.11.
[57] JS9 para. 3.4.
[58] JS2 para. 6.4 and JS9 para. 3.4.
[59] JS2 para. 6.4.
[60] JS1 paras. 19–23 and JS2 paras. 4.7–4.9.
[61] JS1 paras. 57–58.
[62] JS4 paras. 13–15.
[63] JS4 p. 4.
[64] ECLJ para. 18.
[65] JS14 para. 4.2.
[66] JS15 para. 3.3.
[67] JS15 para. 4.
[68] JS13 paras. 3.2.1. and 3.2.2.
[69] JS13 p. 9.
[70] JS13 para. 3.4.
[71] LRC-Land pp. 1–2.
[72] LRC-Land pp. 2–3.
[73] LRC-Land p. 6.
[74] LRC-Land p. 6. See also JS13 para. 3.3.1 and p. 9.
[75] BCN para. 10 and UPR-BCU para. 19.
[76] UPR-BCU para. 22.
[77] JS16 paras. 8–11.
[78] JS17 pp. 5–6.
[79] JS16 pp. 10–11.
[80] AI para. 37.
[81] JS16 paras. 4–7.
[82] JS17 p. 5.
[83] JS17 p. 5.
[84] HRW para. 35 and LRC-Edu para. 37.
[85] AI paras. 16–17.
[86] JS16 paras. 12–19.
[87] AI para. 36.
[88] JS16 p. 10.
[89] JS4 paras. 27–31.
[90] JS4 pp. 7–8.
[91] AI para. 22.
[92] AI para. 23, BCN para. 8 and LRC-Edu paras. 15–18.
[93] AI paras. 40–42.
[94] AI para. 21, BCN para. 21 and LRC-Edu para. 8.
[95] FMSI p. 2.

[96] LRC-Edu para. 19.
[97] JS14 para. 6.6.
[98] JS14 para. 6.10.
[99] AI paras. 24–25, BCN paras. 6–7 and LRC paras. 9–13.
[100] LRC-Edu para. 14.1.
[101] BCN para. 17.
[102] EELC paras. 7–8.
[103] FMSI p. 3.
[104] LRC-Edu paras. 28–30.
[105] FMSI p. 4.
[106] LRC-Edu paras. 33.1–33.2.
[107] LRC-Edu paras. 4–7.
[108] LRC-Edu para. 8.
[109] HRW paras. 34–35.
[110] EELC para. 2.
[111] EELC para. 3.
[112] EELC para. 4.
[113] AI para. 26.
[114] AI para. 29.
[115] LRC-Land pp. 6–7.
[116] AI paras. 43–47.
[117] LRC-Land paras. 7–8.
[118] JS3 p. 6.
[119] JS3 p. 10 para. 6.
[120] JS9 para. 3.8.
[121] JS9 para. 3.8.
[122] AI para. 11, JS9 p. 4, and JS17 pp. 2–3.
[123] AI para. 13.
[124] AI para. 15.
[125] JS16 paras. 20–25.
[126] JS4 paras. 7–8.
[127] AI paras. 30–35.
[128] JS8 para. 52 and JS9 para. 3.1.
[129] JS9 para. 3.1.
[130] JS8 para. 52.
[131] JS4 p. 2.
[132] JS16 p. 10.
[133] JS17 p. 5.
[134] HRW para. 4, JS9 para. 3.2 and JS12 paras. 15–21.
[135] HRW paras. 5–8.
[136] JS12 paras. 24–25.
[137] HRW paras. 9–11.
[138] JS12 p. 8 and JS9 para. 3.2.
[139] JS9 para. 3.2.
[140] JS12 p. 8.
[141] JS4 paras. 9–12.
[142] JS4 pp. 2–3.
[143] JS4 p. 3 and LRC-Edu para. 23.
[144] JS14 para. 4.10.
[145] JS14 paras. 4.11.1–4.11.5.
[146] JS14 paras.5.6.2–5.6.8.
[147] JS17 pp. 6–7.
[148] JS17 p. 7 and UPR-BCU para. 30 iii).
[149] UPR-BCU para. 30 i).
[150] JS9 para. 3.2.
[151] JS14 para. 8.2 and JS4 para. 26.
[152] JS9 para. 3.2.
[153] JS14 para. 8.11.
[154] HRW para. 25.
[155] JS4 paras. 21–25.
[156] NATF p. 4.
[157] HRW para. 29 and LRC-Edu para. 57.1.

158 HRW para. 28.
159 JS4 para. 6 and LRC-Edu paras. 27.2–27.3.
160 FMSI p. 5.
161 NATF p. 4.
162 NATF pp. 4–5.
163 JS4 paras. 6–7.
164 JS3 pp. 1, 4–9.
165 JS3 p. 10 paras. 1–5, 7–9, 10–11.
166 LRC-Land p. 9.
167 HRW para. 16, JS6 paras. 10–12 and JS9 para. 3.2. See also the submission from JS11, contending that physical and sexual violence against LGBTIQ+ persons may constitute torture, as defined under the Prevention of Combating and Torture of Persons Act 2013. It highlighted the vulnerability of LGBTIQ+ persons in detention, that accountability for torture against LGBTIQ+ individuals remained rare, and that the Act was silent on redress. (paras. 1–31) JS11 recommended that South Africa provide obligatory training on LGBTIQ+ rights and anti-torture standards for public officials, establish a task team within the National Prevention Mechanism on vulnerable groups in detention, and ensure redress. (paras. 33–37).
168 HRW para. 20 and JS6 p. 13.
169 HRW paras. 21–23.
170 JS6 p. 13.
171 JS9 para. 3.2.
172 JS6 paras. 17–24.
173 JS6 pp. 13–14 and p. 19.
174 JS6 paras. 24–25.
175 JS8 para. 50.
176 JS6 para. 16.
177 JS6 pp. 9–10.
178 JS7 paras. 1.3 and 2.1.
179 JS7 pp. 3–4.
180 JS8 paras. 39–48.
181 JS8 paras. 55–57.
182 HRW para. 12, JS4 paras. 16–17 and JS5 paras. 7.1–7.4 and 8.1–8.2, and JS9 para. 3.5.
183 JS4 para. 16.
184 HRW para. 13.
185 JS4 para. 19 and JS9 para. 3.5.
186 JS9 para. 3.3.
187 HRW paras. 14–15.
188 JS4 p. 5.
189 JS9 para. 3.5.
190 JS5 para. 11.20 and JS9 para. 3.5.
191 JS5 para. 3.4.
192 JS5 para. 3.5.
193 JS5 paras. 5.1–5.5.
194 JS5 paras. 6.1–6.11.
195 JS5 paras. 11.1, 11.6–11.19.
196 JS10 paras. 7–27 and LRC-Edu paras. 31–32.
197 JS10 para. 40 and LRC-Edu para. 33.3.
198 JS10 para. 40.